No.

Supreme Court, U.S.
FILED

In The 95 1452 JAN 19 1996

Supreme Court of the United States

OFFICE OF THE CLERK

October Term, 1995

DANIEL SINGER

Petitioner,
Pro SE

vs

STEWART'S ICE CREAM CO., INC. its agents and employs, RAYMOND SHULER, individually, ANDREA NICOLLELA, individually, FULTON COUNTY SHERIFF'S DEPARTMENT, its employs JAMES HILLMAN, individually and as deputy sheriff, DEPUTY HILLIER, individually and as deputy sheriff, MARTIN KESTED, individually and as deputy sheriff. VILLAGE OF NORTHVILLE County of Fulton, its agents and employs, SHELDON GINTER individually and as Mayor of the Village of Northville, JAMES GROFF individually and as deputy sheriff and as Village Northville village board member and deputy sheriff.

Respondents.

A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE SECOND CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

DANIEL SINGER
141 MECHANIC ST NORTHVILLE N.Y. 12134
518 863-8212
PETITIONER APPEARING PRO SE

50 pp

QUESTION PRESENTED FOR REVIEW

Should the lower courts be allowed to grant summary judgments in civil cases, where the underlying criminal case has been dismissed in Furtherance of Justice, by claiming that the defendant never proved his innocence? Should the lower courts thereby be allowed to deprive the defendant in a criminal case his assumed innocence and right to jury trial and if so how can this further justice?

PARTIES TO THE PROCEEDING

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PETITION FOR A WRIT OF CERTIORARI

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Appendix A Opinion of lower court

Judgment filed 8-9-1995

En Banc appeal denied 11-1-1995

Docket no. 94-9093

Mandate 11-13-1995

OPINIONS BELOW

On November 1st, 1995ad the second circuit United States court of Appeals en banc affirmed lower courts decision granting summary judgment.

STATEMENT OF JURISDICTION

By virtue of its duty to uphold the rights of the citizens of the United States as granted under the Constitution Particularly the right to trial by jury, freedom from unreasonable search and seizure and the right to freedom of speech, as guaranteed in the First, Fourth and Sixth Amendments as follow

ARTICLE 1

Congress shall make no law respecting and establishment to religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for redress of grievances.

ARTICLE 4

The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

ARTICLE 6 :In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by and impartial jury, of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence.

STATEMENT OF THE CASE

I have been a forest ranger in the small upstate New York community of Northville since 1965. In 1991 I started publishing a political newsletter in an attempt to change a power structure which had been in control of the Village for many years. In the process I began to accumulate enemies.

On Sunday October 20th, 1991 I went into the local Stewarts convenience store to purchase groceries for a search and rescue mission which was in progress in the nearby town of Arrietta. The store was busy so I left a list of the items and prices totaling 11.55 and with the clerk's permission agreed to come back after the search and do the voucher, a procedure the State had used many times with Stewarts.

At about 6:30 the same day shortly after I arrived home from the search I was arrested by Fulton County deputy sheriff Martin Kested on a charge of shoplifting the groceries. I told the officer the whole story but he said the manager Andrea Nicollela was adamant that I be arrested.

5.

Upon arraignment I pleaded innocent and asked for a jury trial.

The following day Nicollela submitted a statement to the sheriff asking that the charges be dropped. Never the less the outgoing D.A. William Gritsavage continued the prosecution. The new D.A. Richard Giardino took over the prosecution in January of 1992 and over my objections conspired with the local Town Judge John Orloff forcing ACOD on me. Orloff resigned the next day.

I appealed the ACOD to State Supreme Court, where Judge Mazzone the only bright spot in a very tarnished judicial system overturned Orloff.s decision. Again I asked for a jury trial. In November of 1992 at a suppression hearing in the city of Gloversville . City Judge Mario Papa on his own motion dismissed the case.

The prosecution had taken 13 months and at cost me least 6,000 dollars.

I then filed suit in U.S. District Court 2nd District, where my case was dismissed summarily. Judge Hurd stating that I had never proved my innocence, and had wasted too many lawyers time already.

The court of appeals affirmed, stating at least 3 times that I had never proved my innocence.

What an astounding process of circular reasoning. You can't prove your innocence without a jury trial and you can't get a jury trial because the judge dismisses in furtherance of justice on his own motion making himself judge and jury and the law of no affect.

Where is the presumption of innocence?

Where is the American ideal of equality?

Where is the Justice?

REASONS FOR GRANTING THE WRIT

By allowing summary judgment in this case you are doing three serious harms to the constitution.
1. Destroying the Fourth Amendment
2. Damaging the Sixth Amendment
3. Weakening the first Amendment

Let me take up the argument on the 4th Amendment first. The 4th Amendment makes a distinction between warrantless seizure and seizures made with Warrants.

The right of people to be secure in their persons, houses, paper and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...

In both cases it protects the rights of citizens to be secure against unreasonable searches and seizures both those with and without legal process, by interpreting as in "Albright" that only seizures carried out under legal processes are protected by the 4th amendment you have granted immunity to police agencies and removed constitutional restraint, leaving defendants without the protection of the 4th Amendment. Any police officer would be a fool to get a warrant under present case law. The framers intended no such tyranny.

To say that the 4th Amendment applies only to arrests under legal process is more than ludicrous, its criminal, and you might as well have written out he 4th completely

As to the 6th amendment the right to a trial by and impartial jury

Summary judgments are supposed to be issued as matters of law. They are are not intended to be a way to circumvent the constitutional guarantee of trial by jury . The framers of the constitution were afraid of judges and so am i.

To say that a dismissal in furtherance of justice is not a favorable termination is contradictory and cuts the heart out of the presumption of innocence. A dismissal in furtherance requires no consent of the defendant. What is a defendant going to say "no judge i demand to be tried. In the present case i fought at great expense in time and money for 13 months to get a jury trial, i was thwarted at every turn even to the extent of being given an ACOD over my objections which is against New York law. I appealed the ACOD and overturned it. The case finally ended up in Gloversville City Court where at a hearing in preparation for trial the judge on his own motion imposed the Dismissal.

If you let this decision stand you would allow any prosecutor to deprive a citizen his right to trial by impartial jury by simply asking for an dismissal in furtherance of justice. Leaving innocent defendants without recourse to the courts, a position fraught with dangers for a Constitutional Republic. The framers intended a presumption of innocence and recourse to the Courts to just Courts and trial by jury not judge.

The conspiracy claim was dismissed by the lower court on the basis that the arresting officer had probable cause. and they said they would not consider his motivations. This is completely circular reasoning. The reason he had probable cause if he indeed had any, was that the plaintiffs conspired to give the impression of probable cause. A fact which i was never given a chance to show because the case was summarily dismissed. Again the lower courts misused their powers and subverted the sixth and seventh amendments.

The writ should be granted as protection of the First Amendment right to freely publish your views. Although i am still able to publish my newsletter, the expense of fighting the malicious prosecution has put an unfair strain on me and my family.

The rich and powerful people in Fulton County used this prosecution as a way to discredit me and my paper. They conspired to do it, and it looks for all the world that they will get away with it Scott free. The worst of it is that if this decision stands, the constitution is just that much weaker, producing exactly the opposite effect from from what i intended.

The ideal of equality is unique to America, the constitution was designed to give the little guy fighting in a just cause the same power as the rich this decision runs opposite to that ideal.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1501 August Term, 1994
Argued' May 5 1995 Decided August 9,

Docket No. 94-9093
DANIEL S. SINGER Plaintiff Appellant,
v
FULTON COUNTY SHERIFF, STEWART'S ICE CREAM CO. INC its agents and employs RAYMOND SHULER, individually, ANDREA NICOLLELA, individually, FULTON COUNTY SHERIFF'S DEPARTMENT its agents and its employs, VILLAGE OF NORTHVILLE ,county of Fulton its agents and employ, SHELDON GINTER, individually and as Mayor of the Village of Northville, JAMES GROFF, individually, as deputy sheriff, and as Village of Northville Board Member, JAMES HILLMAN, individually and as deputy sheriff, DEPUTY HILLIER, individually and as deputy sheriff, MARTIN KESTED, individually and as deputy sheriff,
Defendants-Appellees.

Before; CARDAMONE, MINER, and JACOBS
Circuit Judges.

Appeal from order of United States District Court for the Northern District of New York, GRANTING SUMMARY JUDGMENT TO DEFENDANTS AND DISMISSING THE COMPLAINT.
AFFIRMED

JACOBS. Circuit Judge:

Plaintiff-appellant Daniel S. Singer brought this civil rights action, pursuant to 42 U.S.C. ss 1983, in the United States District Court for the Northern District of New York, alleging that the defendants violated his constitutional rights when they arrested, charged and prosecuted him for petit larceny--a charge that was ultimately dismissed " in the interests of justice". The case was referred to United States Magistrate Judge David N. Hurd, who granted motions by some defendants for summary judgment on all claims, dismissed the complaint against the remaining defendants Sua Sponte, denied motions for sanctions and attorney's fees, and entered final judgment. We affirm.

Background

Daniel S. singer, a resident of the Village of Northville, New York, is employed as ranger by the New York sState Department of Environmental Conservation. In his spare time Singer is active as a maverick in local politics

Northville's Mayor reports to, and takes direction from, the Village Board of Trustees which in turn, conducts periodic town meetings at which residents of the Village come together to discuss and debate issues of Village governance. Early in 1991, the Village Board of Trustees proposed that the Village Adopt a zoning ordinance that would for the first time regulate the development and use of private property in the Village. Opposition to zoning regulation coalesced in a loosely-organized movement that called itself the "Common Sense Group." Singer one of the more outspoken members of the group, circulated a petition denouncing the proposed ordinance and found 512 signatories(around 75% of the eligible voters) among his fellow villagers. Nevertheless, the Village Board adopted the zoning ordinance. This action, taken some time around late winter or early spring of 1991, apparently sharpened Singer's political resolve.

In June 1991, Singer published the first issue of the Northville Free Press, a newsletter that provided a forum for Singer to attack the Village Government. In this he was joined by others who shared his views. The Northville Free Press was widely distributed to Village residents, and was made available free of charge at (among other places) Stewart's Ice Cream Shop

The issues furnished in the appendix on appeal carry editorials, letters to the editor, and cartoons lampooning various village officials. The first issue was dedicated primarily to the zoning controversy. Subsequent issues focused on various topics of local interest, including taxation and expenditures by the Village Board, the purchase by the police department of a 16,000 hihg-performance cruiser, and the contention that many of the Village's police officers and other officials tended to spend an inordinate amount of time congregating at the Stewart's Shop. One cartoon, for example, depicts and obese policeman straddling the roof of a new police car, demanding his turn to drive; a doughnut box is on the ground nearby. Virtually all the issues implore Northville residents to register to vote and to participate in local politics. Singer was able to sell advertising space to local businesses, which helped to defray the publication costs. According to affidavits submitted by Singer, several Village officials expressed dismay at Singer's ability to influence public opinion, and said that they would be happier without The Northville Free Press.

Early in the afternoon of October 20, 1991, Singer received a telephone call requesting him to pick up some provisions and meet a search party that was forming to look for a missing hunter. Around 2:15 PM, he donned his ranger's uniform and drove to the Stewart's Shop, where he picked out several packages of luncheon meats and a loaf of bread. Singer told the clerk, who was busy with other customers, that he needed the supplies for and emergency search and rescue operation and asked if he could come back later to pay for the provisions. Singer claims that the clerk consented, the clerk denies that he consented. Both agree that Singer handed the clerk a list of the items he was taking along with their marked prices, and told him he would return later that day to pay for them. He then left the store.

Around 3:00PM the store clerk, Raymond Shuler, telephoned the store manager, Andrea Nicollela, and informed her that Singer had left the store without paying for $11.55 worth of merchandise. Galvanized into action, Nicollela hurried to the Shop, where (according to Singer's 10j statement and the affidavit of Singer's wife) Nicollela conferred with Deputy Sheriff and Village Trustee James Groff.

At around 5:00 PM, Deputy Sheriff Martin Kested arrived at the Stewart's Shop in response to a call from a person or persons unknown reporting the alleged theft. After interviewing Shuler and Nicollela in a back room, Kested had Shuler fill out and sign an information setting forth his allegation that Singer had stolen the packaged sandwich meats. Shuler also completed and signed a supporting deposition to back up the information. On the basis of these documents, plus whatever additional information was supplied by the witnesses, Kested drove out to Singer's home. Singer had arrived home shortly before Kested arrived and greeted Kested at the door. Kested informed Singer of his mission, elicited Singer's version of the incident, and arrested Singer on the charge of petit larceny.

After Singer was arraigned at he Northampton Town Court, he was released on his own recognizance. The next day, after conferring with her superiors, Nicollela completed and signed a supporting deposition which set forth her knowledge of the incident at the Shop, but which added that she had asked William Gritsavage, the prosecuting attorney, to drop the charges against Singer because the Stewart's company did not want to engender ill feelings with the Department of Environmental Conservation. For reasons not disclosed by the record, the prosecution went forward in spite of this request.

On August 12, 1992, the matter was transferred to the Gloversville City Court, where, on November 19, 1992, City Court Judge Mario Papa dismissed the charge of petit larceny against Singer. The certificate of disposition does not note the basis for the dismissal, but a transcript of the November 19, status hearing reflects that the judge dismissed the charges in "the interests of justice" because the prosecution was unable to locate its primary witness, Raymond Shuler, and therefore could not assure the court the case could be tried on the scheduled date.

Singer filed a complaint on December 3 1992 in the Northern District of New York, alleging four causes of action: (1) false arrest, under ss 1983; (2) malicious prosecution under ss 1983; (3 conspiracy to violate his civil rights under ss 1983' and (4) a supplemental state claim for malicious prosecution. The complaint alleges generally that all the above acts were in violation of his rights under the First, Fourth and Fourteenth Amendments to the US. Constitution.

By consent of the parties and pursuant to 28 U.S.C. ss 636(c), the matter was referred to Magistrate Judge David N. Hurd.

Motions were filed and in an order dated October 4, 1994, the court: (1) granted motions for summary judgment filed by the Village of Northville, Sheldon Ginter (mayor of Northville , James Groff, the Fulton County Sheriff's Department, the Fulton County Sheriff, Deputy James Hillman, Deputy Hillier, and Deputy Martin Kested' (2) dismissed the complaint, sua sponte, against Stewart's Ice Cream Co. , Raymond Shuler, and Andrea Nicollela' (3) denied motions by the Village of Northville, Sheldon Ginter and James Groff for sanctions against Singer (4) denied the motion by Singer for sanctions against the various defendants; and (5) denied motions by various parties for attorney fees. Singer now appeals each aspect of the judgment of the district court. After careful consideration of all the arguments raised by the parties, We affirm.

Discussion

The district court dismissed the complaint on a variety of grounds. all of which are contested by Singer. We confine our discussion to those issues which have at least some merit. We review the grant of a motion for summary judgment de novo , drawing all inferences in the light most favorable to the non moving party. Viola V. Philip Medical Sys of N. Am. 42 F. 3d 712,716 (2d Cir. 1994).

Our standard of review of the district court's decision not to exercise jurisdiction over a pendant state claim is that of abuse of discretion. See Greene v. Town of Blooming Grove, 935 F. 2d 507, 510 (2d Cir.), cert. denied,, 502 US. 1005 (1991).

A. Malicious Prosecution. .

The ss 1983 claim that is premised on malicious prosecution was dismissed on two apparently alternative grounds. The district court observed that the Supreme court's recent opinion in Albright v. Oliver, 114 S. Vt. 807 (1994), forecloses the assertion of malicious prosecution claims under ss 1983. Before stating that conclusion, however, the district court analyzed Singer's ss 1983 malicious prosecution claim under substantive state common law standards, in accordance with the generally applicable law of this Circuit. See Pinaud v. County of Suffolk, 52 F 3d 1139, 1153-1155 (2d Cir. 1995; Singleton v. City of New York, 632 F. 185, 193 (2d Cir. 1980) (analyzing ss 1983 malicious prosecution claim under state common law principles), cert. denied, 450 U.S. 920 (1981). The district court concluded that Singer failed to establish "one of the essential elements of a prosecution for false arrest, false imprisonment, and /or malicious prosecution.

that the prior criminal action complained of must be terminated in plaintiff's favor.."
1, Albright

In concluding that Albright forecloses the use of ss 1983 to state a federal claim for malicious prosecution , the district court relied on the First Circuit conclusion in Perez-Ruiz v. Crespo-Guillen, 25 F. 3d 40 (1st cir 1994), that Albright would appear virtually to foreclose reliance on substantive due process as the basis for a viable malicious prosecution claim under section 1983.." 25 F. . 3d at 42. We agree that under Albright, the Fourteenth amendment right to substantive due process will not support a federal claim for malicious prosecution'; however, Albright does not bar Singer from asserting a federal claim for malicious prosecution under the Fourth amendment

The plaintiff in Albright surrendered to the authorities after learning that a warrant for his arrest had been issued, and was released on bail subject to the usual restrictions on travel. The case was later dismissed on the ground that the charge selling a look alike substance as cocaine--did not state and offense under Illinois law. Albright, 114 S. Ct. at 810 and n.1

Albright brought suit under ss 1983, alleging that the arresting officer had "deprived Albright of substantive due process under the Fourteenth Amendment--his Liberty interest--to be free from criminal prosecution except upon probable cause" Id. at 810-811. The district court concluded that Albright failed to state a claim under ss 1983, and the Seventh Circuit affirmed the dismissal, holding "that prosecution without probable cause is a constitutional tort... only if accompanied by incarceration or loss of employment or some other palpable consequence " Id at 811 (alteration in original). The Supreme Court affirmed on the somewhat different ground that "it is the Fourth amendment. and not substantive due process under which petitioner Albright's claims must be judged" Id.

Chief justice Rehnquist's plurality opinion in Albright joined by Justices O'connor, Scalia and Ginsburg) explained that, because ss 1983' is not itself a source of substantive rights,... The first step in any such claim is to identify the specific constitutional right allegedly infringed" Id. at 811-812(quoting Baker v. McCollan, 443 U.S.137, 140, and 144 n.3.

(1979), and Graham v. Connor, 490 U.S, 386,394 (1989). However," the Court has always been reluctant to expand the concept of substantive due process because the guideposts for responsible decision making in this unchartered area are scarce and open ended. The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity" Id. at 812 quoting Collins v Harder Heights, 112 S. Ct. 1061, 1068 (19920. Therefore so long as " a particular amendment provides and explicit textual source of constitutional protection against a particular sort of government behavior, that amendment not the more generalized notion of "substantive due process" must be the guide for analyzing these claims." Id at 813 (quoting Gramham v. Connor, 490 U.S, 386,395 (1989). The plurality opinion decided that the Fourth amendment is the proper source of constitutional protection for claims, such as malicious prosecution, that implicate a person's liberty interest in respect of criminal prosecutions (and , in particular one's pretrial liberty): " We have in the past noted the Fourth Amendment's relevance to the deprivations of liberty that go hand in hand with criminal prosecutions"Id.

Because the petitioner in Albright did not raise a fourth amendment claim, however, the court refused to reach the question of whether the complained-of conduct actually violated the Fourth Amendment.

Although the concurring justices published four separate opinions, there are at least two common propositions in all five opinions' (1) a claim of malicious prosecution may not be brought as a substantive due process claim,' and (2) the Fourth Amendment provides the source for a ss 1983 claim premised on a person's arrest. The extent of those rights however, remains to defined by the Court

Singer's complaint states that, in causing him to be prosecuted, defendants violated Singer's Fourth Amendment right to be free from unreasonable seizure of his person. In respect of pleading, Albright requires nothing more. (Whether Singer's prosecution deprived him of liberty to a sufficient extent to constitute a "seizure" for Fourth Amendment purposes is largely a question of fact--one which the district court did not need to reach in this case.) That Singer has adequately pleaded a ss 1983 claim for malicious prosecution does not, however end the matter.

Once a plaintiff presents a claim of malicious prosecution under ss 1983, the court must engage in two inquiries: whether the defendant's conduct was tortious; and whether the plaintiff's injuries were caused by the deprivation of liberty guaranteed by the Fourth Amendment. We consider these in reverse order

I. Constitutional Injury

Section 1983 "was intended to (create) a species of tort liability' in favor of persons who are deprived of rights privileges, or immunities secured to them by the Constitution" Carey v. Piphus, 435 U.S. 247, 253 (1978) (quoting Imbler v. Pachtman, 424 U.S. 409,417. (1976) (alteration in original). The"appropriate starting point" of the inquiry is the common law of torts, but "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question..."Id at 258-259. The Supreme Court has recognized that, "in some cases, the interests protected by a particular branch of the common law of torts may parallel closely the interests protected by a particular constitutional right,"

id. at 258; still, it is only the violation of the constitutional right that is actionable and compensable under ss1983. "The validity of the claim must (therefore) be judged by reference to the specific constitutional standard which governs that right.. "Graham v. Connor, 490 U.S. 386, 394 (1989).

The Fourth Amendment right implicated in a malicious prosecution action is the right to be free of unreasonable seizure of the person--i.e., the right to be free of unreasonable or unwarranted restraints on personal liberty. A plaintiff asserting a Fourth amendment malicious prosecution claim under ss 1983 must therefore show some deprivation of liberty consistent with the concept of "seizure". This requirement is necessary to ensure that the ss 1983 plaintiff has suffered a harm of constitutional proportions.e. a harm cognizable under ss1983. The Supreme court has " said that the accused is not entitled to judicial oversight or review of the decision to prosecute". Albright, 114S. Ct. at 813 (quoting) Gerstein v. Pugh, 420 U.S, . 103, 118-119 (1975).

That pronouncement is consonant with the principle that "the abstract value of a constitutional right may not form the basis for ss 1983 damages" Memphis Community sch. dist. v. Stachura, 477,U.S. 299,308 (1986). Rather, an award of "damages must always be designed to compensate injuries caused by the constitutional deprivation..."Id. at 309 (quoting Carey v. Piphus, 435 U.S. at 265 (alteration in original).

To maintain a ss 1983 claim for malicious prosecution under the Fourth Amendment, the deprivation of liberty-- the seizure-- must have been effected "pursuant to legal process" Heck v. Humphrey, 114 S. Ct. 2364, 2371 (1994). " The essence of malicious prosecution is the perversion of proper legal procedures." Broughton v. State of new York, 373 N.Y> S. 2d 87, 93, cert. denied, 423 U.S. 929 (1975). Ordinarily this "legal process" will be either in the form of a warrant, in which case the arrest itself my constitute the seizure, see id. at 94 (When an unlawful arrest has been effected by a warrant an appropriate form of action is malicious prosecution"), or a subsequent arraignment, in which case any post-arraignment deprivations of liberty (such as being bound -over for trial) might satisfy this constitutional requirement.

In this case Singer's arrest cannot serve as the predicate deprivation of liberty because it occurred prior to his arraignment and without a warrant, and therefore was not "pursusant to legal process."See Heck, 114, S. ct. at 2371 ; See also Broughton, 373 N.Y.S. 2d at 94 ("The distinction between false imprisonment and malicious prosecution in the area of arrest depends on whether or not the arrest was made pursuant to a warrant.") Typically, a warrantless deprivation of liberty from the moment of arrest to the time of arraignment will find its analog in the tort of false arrest (addressed infra , see Broughton, 373 N.Y.S. 2d at 94 (whenever there has been an arrest and imprisonment without a warrant, the officer has acted extrajudicially and the presumption arises that such an arrest and imprisonment are unlawful..." while the tort of malicious prosecution will implicate post-arraignment deprivations of liberty.. See Raschid v. News Syndicate Co., 267 N.Y.S. 221 225 (1st Dep't 1933) ("A charge and an arrest do not amount to a prosecution. The action of malicious prosecution lies only when a legal prosecution, a judicial proceeding, has been maliciously and without probable cause, instituted against the plaintiff, and has been terminated in the plaintiff's favor")

(internal quotations and citation omitted). aff'd, 265 N.Y. 1 (1934))with inapplicable modification); see also W. Keeton et al., Prosser and Keeton on the Law of torts ss 119 at 888 (5th ed. 1984) ("If there is a false arrest claim, damages for that claim cover the time of detention up until issuance of process or arraignment but not more. From that point on, any damages recoverable must be based o a malicious prosecution claim..."). Therefore to successfully pursue a ss 1983 claim of malicious prosecution in violation of his Fourth Amendment rights, Singer must show some post-arraignment deprivation of liberty that rises to the level of a constitutional violation. See Stachura, 477 U.S. at 309.

Assuming arquendo, that Singer's release after arraignment may constitute e a "seizure," nothing in the record indicates that Singer was subjected to any restriction on his ability to travel freely; indeed, there is nothing to indicate that he was required to post any bail. Because the district court had no occasion to reach this issue, we do not have the benefit of factual findings concerning any deprivation of liberty suffered.

by Singer as a result of the charges lodged against him. We therefore do not decide whether there was a seizure in this case sufficient to implicate the Fourth Amendment.

3. Favorable Termination.

"over the centuries the common law of torts has developed a set of rules to implement the principle that a person should be compensated fairly for injuries caused by the violation of his legal rights. These rules, defining the elements of damages and the prerequisites for their recovery, provide the appropriate starting point for the inquiry under ss1983 as well" Heck v. Humphrey, 114 S. Ct. 2364 2370 (1994) (quoting Carey v. Piphus, 435 U.S. 247, 257-58 (1978)0.

At common law' an accused , in order to maintain a cause of action for malicious prosecution, must establish that the state prosecution terminated in his favor" Singleton, 632 F. 2d at 193; see also Heck, 114 S. Ct. at 2371 ("one element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused"); Prosser and Keeton ss119 at 874-75; Restatement (Second) of Torts ss653 (b) (1977)

The district court found that the petit larceny charge against Singer had been dismissed "in the interests of justice" by the state court. Although the certificate of dismissal does not state the basis for dismissal the transcript of hearing in state court reflects that the judge dismissed the case in the interests of justice. " As a matter of law, (a dismissal in the interests of justice cannot provide the favorable termination required as the basis for a claim of malicious prosecution" Hygh v. Jacobs, 961 F. 2d 359, 368 (2d Cir. 1992). Therefore, under the traditional common law analysis used by this Court in such actions, Singer could not establish one of the elements of his malicious prosecution claim. The district court so concluded, and dismissed that claim; we affirm.

B. False Arrest

The district court dismissed the false arrest claim on three grounds; that there was no favorable termination of the proceeding against Singer; that there was probable cause for the arrest; and that the arresting officer enjoyed qualified immunity. We affrim on the ground the there was probable cause for the arrest, a conclusion that subsumes the issue of immunity.

1 Favorable Termination

The common law tort of false arrest is a species of false imprisonment, an action" derived from the ancient common-law action of trespass that protects the personal interest of freedom from restraint of movement." Broughton, 373 N.Y. S. 2d at 93. This claim is distinct from one of malicious prosecution; "each protects a different personal interest and is composed of different elements.' Id. Under New York Law, the elements of false imprisonment claim are: "(1) the defendant intended to confine (the plaintiff), (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged" Id; see also Hygh, 961 F. 2d at 366 ("the elements of a claim of false arrest under ss 1983 are substantially the same as the elements of a false arrest claim under New York Law").(internal quotations and citations omitted). A favorable termination of the proceedings is not and element of this tort. We affirm the dismissal of this claim nevertheless on the districts court's alternative ground that there was probable cause for the arrest.

2. Probable Cause.

There can be no federal civil rights claim for false arrest where the arresting officer had probable cause. See Bernard v. United States, 25 f. 3d. 98 102 (2f Cir. 1994) Probable cause is established "when the arresting officer has knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested" O'Neill v. Town Babylon, 986 F. 2d 646, 650 (2d Cir. 1993) (quoting Calamia v. City of New York, 879 F. 2d 1025, 1032 (2d Cir. 1989)).

The district court made the following factual findings: Deputy Kested, upon his arrival at the Stewart's Shop "was advised by Shuler as clerk.. and his supervisor, Nicollela that plaintiff had taken items with a value of $11.55 from the store without paying for same". In addition, Shuler signed a criminal information and a supporting deposition reciting his version of the incident. Deputy Kested needed nothing further to lawfully arrest Singer.

An arresting officer advised of a crime by a person who claims to be the victim, and who has signed a compliant or information charging someone with the crime, has probable cause to effect an arrest absent circumstances that raise doubts as to the victim's veracity. See Hebron v. Touhy, 18 F. 3d 421, 422-423 (7th Cir 1994)' Miloslavsky v. AES Engineering Soc., Inc. 808 F. Supp. 351 355 (S.D. N.Y. 1992) aff'd, 993 F 2d 1534 (2d cir.), cert. denied, 114 S. Ct. 68 (1993). In this case Shuler's supporting deposition recounted that Singer presented him with a list of items he was taking and asked if he could come back later to pay for them' according to Shuler, he expressly told Singer it was not all right for Singer to take the food items from the store without paying. The circumstances of this arrest raise questions as to the motivation of the arresting officer, the village officials, even the store employees; but motivation is not a consideration in assessing probable cause See Mozzochi v. Borden, 959 F 2d 1174, 1179-1180 (2d Cir. 1992) The facts as presented to Kested by Shuler established each of the elements of the crime of larceny. Under these circumstances, Kested had probable cause to arrest Singer for the crime of petit larceny.

C. Conspiracy.

In addition to the substantive claims of false arrest and malicious prosecution, Singer also alleged (under ss 1983) that the defendants conspired to violated his constitutional rights. While substantive claims under ss 1983 are normally brought only against state officials, ss 1983 claim may be proved by showing that a person acting under color of state law... collaborated or conspired with a private person... to deprive the plaintiff of a constitutional right... " Fries v. Barnes, 618 F 2d 988, 990 (2d Cir 1980) (citing Adickes v. S. H. Kress and Co., 398 570 F.2d 1080,1083 (2d cir. 1977) ('" an ordinary citizen who conspires with a state agent to violate the civil rights of a plaintiff is equally liable...") Thus, this claim appears to have been interposed in order to bring federal suit against the private party defendants: Stewart's Ice Cream Co., Raymond Shuler and Andrea Nicollela

The district court dismissed this claim on the ground that a plaintiff alleging a ss 1983 conspiracy claim must prove and actual violation of constitutional rights. In this we agree. Section 1983 is only a grant of a right of action; the substantive right giving rise to the action must come from another source.

Therefore, although the pleading of a conspiracy will enable a plaintiff to bring suit against purely private individuals, the lawsuit will stand only in so far as the plaintiff can prove the sine qua non of a ss 1983 action: the violation of a federal right. See Adickes v. S.H. Kress and Co., 398 U.S. 144, 150 (1970) (one of the necessary elements of a ss 1983 action is "that the defendant has deprived (the Plaintiff) of a right secured by the Constitution and laws of the United States").

The district court based its ruling on the conclusion that Singer could not prove essential elements of his claims of false arrest and malicious prosecution, and therefore could not prove an actual violation of his constitutional rights. As noted above, these claims primarily implicate Fourth Amendment rights;
Singer, however, also pleaded a violation of his First Amendment rights--a claim the district court failed to address.

Singer alleges that the various parties conspired to, and in fact did, charge him with petit larceny as a payback for his political activities and his publication of The Northville Free Press.

For example. paragraph 22 of his second amended complaint alleges that " among the purposes of said conspiracy was the attempt to dissuade plaintiff from publishing his responsible views regarding politics, and local government, and police activity and the fact that the police were known to frequent the local Northville Stewart's Shop." This allegation of retaliatory prosecution goes to the core of the First Amendment, and is thus a claim that may be pursued under ss 1983. See Mozzochi, 959 F. 2d at 1178 (plaintiff's letter writing campaign to a local official, criticizing official's performance of duties, was "fully protected by the First Amendment," and permitted inference "that the prosecution was initiated to deter, if not silence, plaintiff's criticisms..."(internal quotations omitted); undisputed that retaliatory prosecution may expose a state official to section 1983 damages."

It is, however, insufficient to merely plead facts upon which and inference of retaliatory prosecution may be drawn. We have held previously that if the officer either had probable cause or was qualifiedly immune from subsequent suit (due to and objectively reasonable belief that he had probable cause)., then we will not examine the officer's underlying motive in arresting and charging the plaintiff.

See Mozzochi, 959 F. 2d at 1179-80 (probable cause); Magnotti, 918 F. 2d at 368 (qualified immunity). As noted above, there was probable cause to arrest and charge Singer with petit larceny. Furthermore, although Singer alleges damage to his reputation, he has failed to allege with sufficient particularity any actual "chilling" of his speech, or of his participation in the political process. While the vague allegations in his complaint might carry such a suggestion, Singer did not press this issue in the district court, nor did he advance any arguments in support of this particular claim on appeal. As a matter of fact, Singer continued to publish his newspaper. Under these circumstances, we conclude that he has failed to meet his burden of demonstrating a viable First Amendment claim; " An individual does not have a right under the First Amendment to be free from a criminal prosecution supported by probable cause that is in reality and unsuccessful attempt to deter or silence criticism of t$he government Mozzochi, 959 F .2d at 1180.

Because the ss 1983 conspiracy claim was properly dismissed, and because this was the only federal claim that could be asserted against the private-party defendants, we hold that the district court did not err in its sua sponte dismissal of the complaint against them

particularly in light of the court's appropriate exercise of discretion in refusing to accept jurisdicton over the supplemental state claim after the federal claims had been dismissed.

Conclusion

We have considered all the other arguments raised by the parties and find them to be without merit. For the reasons stated above, the judgment of the district court dismissing the complaint against all defendants is affirmed.

Appendix A

UNITED STATES COURT OF APPEALS
THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, one thousand nine hundred and ninety-five.

PRESENT: HON. RICHARD J. CARDAMONE
HON. ROGER J. MINER
HON. DENNIS G. JACOBS
Circuit Judges

Docket No. 94-9093

Daniel S. Singer,
Plaintiff- Appellant,

V.

FULTON COUNTY SHERIFF, STEWART'S ICE CREAM CO., INC., its agents and employs, RAYMOND SHULER, individually , ANDREA NICOLLELA, individually, FULTON COUNTY SHERIFF'S DEPARTMENT, its agents and its employs, VILLAGE OF NORTHVILLE, County of Fulton, its agents and employs, SHELDON GINTER, individually, and as Mayor of Village of Northville, JAMES GROFF, individually and as deputy sheriff; and Village board member, JAMES HILLMAN individually and as deputy sheriff, DEPUTY HILLIER, individually and as deputy sheriff, MARTIN KESTED, individually and as deputy sheriff,

defendants - Appellees.

Appeal from the United States District court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ORDERED ADJUDGED AND DECREED that the order of said district court be and is hereby is affirmed in accordance with the opinion of this Court, with costs to be taxed against the appellant.

GEORGE LANGE III Clerk

Issued as Mandate November13-1995

UNITED STATES COURT OF APPEALS
for the second circuit
United States Court House
40 Foley Square
New York 10007

George Lange III
Clerk

At a stated term of the United States Court of appeals for the second circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 1st day of November one thousand nine hundred and ninety-five.

Singer

Plaintiff-Appellant

v

Dkt No: 94-9093

Fulton Co. Sheriff's

Defendants-Appellees.

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by the appellant Daniel S. Singer.

Upon consideration by the panel tha decided the appeal, it is ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken there on.

FOR THE COURT
GEORGE LANGE III
Clerk

Administrative Attorney · Beth J. Meador

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Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Docket No. 94-9093

Daniel S. Singer,
Plaintiff,

V.

FULTON COUNTY SHERIFF, STEWART'S ICE CREAM CO., INC., its agents and employs, RAYMOND SHULER, individually , ANDREA NICOLLELA, individually, FULTON COUNTY SHERIFF'S DEPARTMENT, its agents and its employs, VILLAGE OF NORTHVILLE, County of Fulton, its agents and employs, SHELDON GINTER, individually, and as Mayor of Village of Northville, JAMES GROFF, individually and as deputy sheriff; and Village board member, JAMES HILLMAN individually and as deputy sheriff, DEPUTY HILLIER, individually and as deputy sheriff, MARTIN KESTED, individually and as deputy sheriff,

defendants

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Therefore it is ORDERED that
1. The motion by the defendants Village of Northville. Sheldon Ginter, and James Groff for summary judgment is granted;
2. the motion by the defendants Fulton County Sheriff's Department, Fulton County sheriff, James Hillman, Deputy Hillier and Deputy Martin Kested for summary judgment is granted;
3. The motion by the defendants Village of Northville, Sheldon Ginter and James Groff for sanctions is denied;
4. The cross-motion by the plaintiff for summary judgment is denied;
5. The motion by the plaintiff for sanctions is denied;
6. The complaint is dismissed as against the defendants Stewart Ice Cream Company, Inc. Raymond Shuler, and Andrea Nicollela sua sponte; and
7. Attorneys fees are denied.
The Clerk is directed to enter judgment dismissing the complaint in its entirety

IT IS SO ORDERED U.S. Magistrate judge
October 4, 1994
Utica New York.